MITCHELL | HAMLINE
School of Law

William Mitchell Law Review

Volume 27 | Issue 2 Article 35

2000

The Looming Subsidized Housing Crisis

Kristin A. Siegesmund

ESSAY: THE LOOMING SUBSIDIZED HOUSING CRISIS

Kristin A. Siegesmund†

† Attorney for Legal Aid in Minneapolis, Minnesota; Adjunct Professor William Mitchell College of Law.

I. INTRODUCTION

I work for Legal Aid. I have had a long journey to get here. I grew up in an upper middle class suburb of Detroit. Although I was a high school student during the 1967 riots that tore Detroit apart, I was insulated from most of the real poverty that affected that city. I went to law school in 1977 with a vague idea that I would be a public servant. I started my career at the Department of Justice and worked as an antitrust investigator and criminal prosecutor. Then I spent some time as a commercial litigator with a large private law firm in Minneapolis. Ten years ago I left private practice and came to the Minneapolis Legal Aid Society. At first, I helped children with disabilities obtain appropriate special education services. Six years ago I moved to the housing unit.

When I first started as a housing attorney I saw cases as narrow legal issues to be solved. As time went along, I learned that the problems that face my clients are part of a large web of problems that involve education, health care, transportation and job training. It has become increasingly clear that the housing problems facing my clients could not be solved from the bottom. Solutions need to be implemented at the top.

The following article is based on a Continuing Legal Education (CLE) course I presented in 1999. Its purpose is to give an overview of the complexity of the current housing crisis. A lot of the information is based on my general knowledge in this area. However, I have tried to include references to specific statutes and regulations as well as certain publications so that interested readers could find more specific information.

My time at Legal Aid has also taught me an important lesson. When I first started I thought that I was providing an almost charitable service. The truth is that I may have gotten more from my clients then I have given. Every day clients walk into my office facing burdens that would make me fall into despair. Yet they approach life with such strength and dignity and good humor, that they are an inspiration to me. It has been a privilege to serve them.

II. THE LOOMING SUBSIDIZED HOUSING CRISIS

Shelter is a basic need. Yet for an increasing number of Americans it is beyond their reach—even in the midst of an economic boom. More and more adults and children are homeless. Housing in the private market is simply too expensive for a large number of households. It is too expensive even for many working families. And at the very time that the private market is out of reach for many, the government-subsidized market is shrinking. How is it, that at the beginning of the 21st century, we face a situation where we cannot house significant portions of our population? The current crisis is the result of a confluence of many factors.

A. *The Housing Crisis*

Fifty years after Congress declared it a national goal to provide a "a decent home and a suitable living environment for every American family," we find that there is a severe and growing shortage of affordable housing.[1] One out of seven families nationwide in 1998 had a critical housing need, which means that the family was spending more than fifty percent of its income for housing or the family was living in a severely inadequate unit.[2]

The lack of affordable housing is particularly acute in the Twin Cities metropolitan area. Housing is "affordable" if a family pays no more than thirty percent of its income for housing costs. In 1998, about fourteen percent of all households in the Twin Cities had a "critical housing need."[3] In 1998, 185,000 Twin Cities metro area households with incomes below $30,000 paid more than thirty percent of their income for housing. There were 68,900 renter households with annual incomes below $10,000 in the metropolitan area, but only 31,200 housing units, less than half the units needed, with rents affordable at this income level. Only thirty-six percent of families living in poverty in the Twin Cities area received housing assistance from the government.[4] Homelessness among

1. HUD, *The Widening Gap: New Findings on Housing Affordability in America, at* http://www.hud.gov/pressrel/afford/afford.html (last visited Nov. 12, 2000).

2. NEW CENTURY HOUSING, EXECUTIVE SUMMARY: HOUSING AMERICA'S WORKING FAMILIES 8 (June 2000).

3. *Id.*

4. Family Housing Fund, *The Need for Affordable Housing in the Twin Cities, available at* http://www.fhfund.org/Research/need.htm (last visited Nov. 12, 2000).

people of all ages has risen sharply in the Twin Cities metropolitan area. From 1987 to 1999, the number of people living in metro-area temporary housing, such as emergency shelters and transitional housing, has more than tripled.[5] Lack of affordable housing has put an increasing number of our families at risk.

The lack of affordable housing is affecting more than the poor. The issue is one that strikes at almost all sectors of society. A June 2000 study of 1998 and 1997 data from seventeen metropolitan areas, including the Twin Cities, by the Center for Housing Policy, a research affiliate of the National Housing Conference in Washington, D.C., entitled "Housing America's Working Families," concludes that "there are 13.7 million families with critical housing needs—from all walks of life. Some are elderly. Others are unemployed and dependent on welfare. Some have physical or emotional handicaps that limit their full participation in the economic mainstream. Others are working families whose modest incomes do not support the costs of decent housing. Still others have incomes that place them squarely in the ranks of the middle class and, in some cases, even higher."[6] Nearly three million moderate-income families have "critical housing needs" despite working the equivalent of a full-time job.[7] Ten percent of all working families in Minneapolis-St. Paul area have "critical housing needs."[8]

And the problem is getting worse. "Between 1995 and 1997, the number of moderate-income working families with critical housing needs rose by about 440,000—a seventeen percent increase in just two years."[9] The number of affordable units has decreased by five percent from 1991 to 1997. The number of very low income renters with incomes at or below thirty percent of median has grown by three percent from 1995 to 1997. The result is that the number of units affordable to very low income renters has significantly declined. In 1995 for every 100 low income renters, there were forty four units affordable and available to them. In 1997 there were only thirty six units for every 100 low income rent-

5. Family Housing Fund, *Children Pay the Price for Homelessness, available at* http://www.fhfund.org/Research/familyhomelessness.htm (last visited Nov. 12, 2000).
6. *Supra,* note 2.
7. *Id.*
8. *Id.* at 9.
9. *Id.*

ers.[10]

B. Types Of Subsidized/Assisted Housing

Increasingly the only way that housing can be affordable for renters with incomes at or below fifty percent of median is if it is subsidized. In fiscal year 2000 a four person family in the Twin Cities making less than $19,700 would be below thirty percent of the current median income. A four person family making $32,850 would be below fifty percent of median for the Twin Cities.[11] The United States Department of Housing and Urban Development (HUD) sets an Fair Market Rent (FMR) typically at the fortieth percentile of area rents. For 2001, the FMR in the twin cities is $549 for a one bedroom apartment, for a two bedroom is $702 and for a three bedroom unit is $950.[12] Using the accepted standard that housing is affordable if no more than thirty percent of income goes toward housing, a family at fifty percent of median could afford an average two bedroom unit, if they could find it, but could not afford an average three bedroom unit. A family or person at thirty percent of median cannot afford even an average one bedroom unit unless it is subsidized.

There are a number of different types of subsidies. They can be broken broadly into five categories: public housing, federally supported mortgages, Section 8 project based subsidies, Section 8 certificates or vouchers, and tax credit properties. Public housing was created with the passage of the United States Housing Act in 1937. By the mid-1970's over 1 million public housing units had been created. In the 60's and 70's the government created subsidized and insured mortgage programs to encourage the private market to loan money to build affordable housing. Between 1965 and 1975, over 600,000 units of affordable housing were built under HUD's Section 221(d)(3) and Section 236 programs.[13] In 1974, Congress shifted direction and provided subsidies to private owners to build and maintain affordable housing. Congress also started

10. *Supra*, note 1. The available and affordable housing stock is eroding at an alarming rate.

11. *See* data on Minnesota Housing Partnership website, *at* http://www.mhponline.org.

12. National Low Income Housing Coalititon, *Out of Reach, available at* http://www.nlihc.org/oor2000/index.htm. (last visited Nov. 12, 2000).

13. National Housing Trust, *Overview of Federally Assisted Multifamily Housing Programs, available at* http://www.nhtinc.org (last visited Nov. 12, 2000).

providing subsidies directly to tenants so that tenants could access housing in the private market. Section 8, in the form of tenant-based and project based subsidies, was added to the 1937 Housing Act. In 1999, Section 8 included over three million units, more than double the size of the public housing program.[14] Additional subsidies have been provided through state tax credit incentives.

1. *Public Housing*

Public housing is housing owned and operated by the government. It is available for elderly, disabled and low income residents. The tenant pays a portion of the rent, usually thirty percent of his/her income, and the government pays the balance of the rent with money provided from HUD. Residents in public housing can only have their leases terminated for good cause.[15]

2. *Subsidized Federally Insured Mortgages*

There were many different programs created by Congress to encourage the building of affordable housing. Most of these programs were started in the late sixties and early seventies. Typically they involved some sort of low interest loan, either through subsidized mortgage payments or through a low interest mortgage, in exchange for a promise to keep the rents low and to make the units available to low and moderate income households. Although most of the mortgages had forty year terms, program regulations allowed most owners to prepay their mortgages after twenty years. By pre-paying, owners could terminate the rent and income restrictions, often called "use restrictions." In the 236 and 221 programs, rent was based on operating expenses. Another important restriction is that tenants can only have their leases terminated for good cause. Examples of these programs include:

1. HUD insured and subsidized mortgages under Section 236, 221(d)(3), 221(d)(4) and 202 (for non-profits) of the National Housing Act.
2. Minnesota Housing Finance Agency tax exempt mortgages.

---

14. HUD, *Opting In: Renewing America's Commitment to Affordable Housing, available at* http://www.hud.gov/pressrel/optingin.html (last visited Nov. 12, 2000).

15. United States Housing Act of 1937, 42 U.S.C. § 1437 et seq. as amended by the Quality Housing and Work Responsibility Act of 1998, tit. V of Pub. L. No. 105-276, 112 Stat. 2461, 2518 (October 21, 1998).

3. Section 515 overseen by Rural Development (formerly FmHA).

These subsidized mortgage projects are perhaps the most threatened.

> Because of the way these programs were structured, they provide some of the most affordable rental housing in our community, with rents far below market. Today, their future in high cost housing markets is severely threatened. Not only have they increased substantially in market value, but many of these developments are also a tax liability for their original owners because the tax benefits have expired and the projects are generating phantom income, "paper" income on which owners must pay taxes. More recent buyers have seen their tax benefits eroded substantially by federal tax reform. Right now, there are few incentives to retain the property's original use, and many incentives to prepay the mortgage and convert to market-rate housing.[16]

3. Section 8 Rent Subsidies To Privately Owned Buildings

Project-based Section 8 exists where a private owner has contracted with HUD to make some or all of the units affordable. The owner agrees to charge rents at the government set FMR (Fair Market Rate). The FMR is usually set at the fortieth percentile of rents in the area. Again the tenant usually pays thirty percent of his/her income and the government pays the balance. The subsidy attaches to the unit. So if a tenant moves, the subsidy does not move with the tenant. It stays with the building so that the project remains subsidized.

Between 1974 and 1983, 800,000 apartments were developed under the project-based program, including Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation. Unlike the older assisted housing programs, project-based Section 8 is solely a rental subsidy program, not provided in tandem with a specific government mortgage loan program. Instead, owners could opt to use a wide variety of mortgage financing options, with or without FHA mortgage insurance, and the owner could contract to use Section 8 subsidies in all or only a portion of a develop-

16. *Supra* note 13.

ment's units.[17]

Initially, the subsidy contracts had a length of twenty years and were then renewed in five year increments. Recently Congress has decided that these Section 8 contracts will be renewed for only one year at a time. Owners now have a right to choose not to renew, or to "opt-out" of, these Section 8 contracts. These contracts began expiring in 1991, and some owners already have exercised their right to opt-out of renewing their contracts.[18]

4. *Section 8 Tenant-Based Certificates And Vouchers*

With certificates and vouchers the rent subsidy is attached to the tenant. The tenant generally pays thirty percent of his/her income and the rest of the rent is payed by the government.[19] Changes in the law a few years ago made tenant based certificates and vouchers more like private leases. For example, after the first year a landlord does not have to have good cause to refuse to renew a lease. Increasingly, tenant-based subsidies are becoming the primary mode of offering subsidies to tenants.

Theoretically the tenant can use the subsidy in any private housing and anywhere in the country. However, as a practical matter the value of the subsidy is limited to a FMR which is set by the local Housing Authority. The FMR for the Minneapolis/St. Paul Metro area is set at the fortieth percentile for rents in the area. For fiscal year 2001 the FMR for a one bedroom unit is $549, for a two bedroom unit is $702 and for a three bedroom unit is $950.[20]

The certificate and voucher programs have been merged by recent federal action in 64 Fed. Reg. 26631 (May 14, 1999). Those regulations became effective August 12, 1999. Previously, the most significant difference between the two systems was whether the FMR was a bar to rental. Certificate holders could not rent an apartment above the FMR. Voucher holders could rent an apartment above the FMR but the renter would have to pay the difference between the rent and the FMR out of his/her own pocket. With the merging of the two systems more tenants are allowed to rent above the FMR. However, Federal legislation passed October 31, 1998 does not permit anyone to pay more than forty percent of

17. *Id.*
18. *Id.*
19. *Supra* note 15.
20. *Supra* note 12.

their income for a unit. As a practical matter, most low income tenants cannot rent above the FMR and still stay below the forty percent requirement. So they must find units at or below the FMR.

Another problem with the new voucher program is that Public Housing Authorities have discretion as to where they will set the payment standard. They can set it anywhere between 90-110% of the FMR. A higher payment standard would make more units affordable. However, a higher standard could also reduce the number of vouchers that could be distributed since each voucher would require more money from the government. In the current environment, where many vouchers are unable to be used, it makes sense to raise the standard to give those people who have a certificate a better chance at finding housing.

5. *Tax Credit Properties*

There are numerous state assisted projects which receive tax credits in exchange for making a percentage of their units affordable, which usually means that rents are lower than market rent. Most of these projects require that a percentage of tenants have incomes below the median income. But they are not targeted at the very poor. Many tax credit projects meet their obligations if they rent to persons that are at eighty percent of median. For fiscal year 2000 the median household income in the Twin Cities is $68,600.[21] This means that a family earning $55,040 would qualify for a tax credit property. Therefore, tax credit properties have not significantly addressed the problems of affordability for families with incomes below $30,000.

The current crisis in affordable housing reflects a confluence of factors including the decline in the number of affordable housing units, the fact that many jobs do not pay a living wage, increasing demand, and the increasing cost of maintaining assisted housing. The federal government's retreat from fully supporting affordable housing, and the private market's inability to pick up the slack, has all contributed to the current situation.

III. DECLINING FEDERAL SUPPORT HAS ACCELERATED THE CRISIS

Our nation's assumptions about the role of the federal gov-

21. *See* Minnesota Housing Partnership website, *at* http://www.mhponline.-org.

ernment to provide for basic needs, such as housing, have taken a radical shift. In the last ten years the federal government has decided that it should not be in the housing business. Consequently, the federal government has not built new housing and has been reluctant to allocate funds to maintain existing housing. In addition market circumstances are such that private owners, without additional incentives, are far less likely to stay in the assisted housing field. The result of this shift in Federal emphasis is that there has been a decline in the number of assisted housing units. The number of assisted units fell in 1996 for the first time in the history of the assisted housing program–even though demand for affordable housing is increasing.

A. *Prepayment Of Subsidized Mortgages*

Currently many buildings with federally subsidized mortgages are choosing to prepay their mortgages and to enter the private housing market. This is now possible because the twenty year period in which these owners were forbidden from prepaying their mortgages is over. Gentrification and low vacancy rents have caused the street rent to be much higher than the subsidized rent, making it economical to prepay, especially now when mortgage rates have been so low. In addition, the tax advantages of many of these programs have long since evaporated. Although legislators can put up some minor barriers to prepayment, such as notice requirements, there is little they can do to prevent these prepayments.

The federal government has abandoned an effort it made to discourage prepayments. In 1990, Congress enacted a federal preservation program designed to preserve federally assisted housing as affordable housing by providing financial incentives to owners and by financing purchases by nonprofits and tenant organizations. Federal Preservation Program ("Title VI," or the "Low-Income Housing Preservation and Resident Homeownership Act of 1990" or "LIHPRHA").[22] Very few of these "preservation plans" were ever implemented. The reasons for the failure of LIHPRHA are complex and include a lack of desire by the federal government to continue in the subsidized housing business and a

22. Pub. L. No. 101-625, tit. VI, 104 Stat. 4079, 4249 (Nov. 28, 1990), codified at 12 U.S.C.A. § 4101 (West Supp. 1998).

strong reaction by Congress to disclosures of gross mismanagement and cream skimming in a small, but significant, number of projects. Many members of Congress, reluctant to subsidize incompetent or dishonest owners, wanted to privatize all housing. In addition, owners of valuable properties which would benefit from prepayment appeared likely to succeed in a growing number of breach of contract law suits. Starting in 1996, Congress authorized owners to prepay mortgages and convert to market-rate use. Although the preservation program has not been repealed, there is no money to actually implement any of these preservation plans, many of which had been approved. Starting in fiscal year 1998, Congress provided no funding to preserve units, limiting its funding to replacement vouchers.

1. *There Are Few Restrictions On Prepayment*

Most of the subsidized mortgage programs have almost no restrictions on prepayment. One exception is the 515 rural program. In the 515 program an owner who wants to prepay has to make a showing that there is adequate low income housing in the area to take the place of these units. Similarly, Section 202 properties for the elderly also have restrictions on prepayment.[23] Otherwise, in general for Section 236 and 221 projects, as long as an owner has given proper notice for prepayment, the owner can go forward even if there is no substitute housing in the area.

2. *Sticky Vouchers*

In order to soften the blow of prepayment, the federal government has provided that residents of buildings that prepay will be given special replacement Section 8 vouchers that are "sticky" or "enhanced." The sticky voucher differs from a regular voucher in that the government will pay above the FMR. In other words, the tenant will pay thirty percent of his or her income and the government will pay the rest, even if the rent is hundreds of dollars above the FMR as long as the rent reflects a local market rate. This potentially can allow residents to stay put. Residents can also decide to leave the building and take their voucher with them. However, if they leave, the voucher loses its enhanced characteristics.

In 1999 Congress finally dealt with the uncertainty of sticky

---

23. HUD Notice 99-6, issued in April of 1999.

vouchers and provided permanent statutory authority for them in section 8(t) of the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act, Public Law 106-74, enacted October 20, 1999. This act clarified the sticky voucher program which had initially been authorized as part of annual appropriations acts in fiscal years 1997-1999. Now all sticky vouchers, including those authorized in the earlier appropriations acts, have the same characteristics. The new law clarifies that the PHA will continue to increase its payment, year after year, as long as the rent is reasonable for the market.[24] However, sticky vouchers are not a long term solution. First, there is no guarantee of continued funding or that sticky vouchers will be available for all prepayments in the future because it is very expensive for Congress to fund a program that essentially is paying market rent in gentrified areas. Appropriations are made annually and residents can never be sure from year to year whether there will be continued political will to fund this program. Second, the October 1999 law did not clarify another significant issue concerning sticky vouchers, that is, whether an owner must accept them after the first year following conversion. In other words, may an owner refuse to renew a lease without cause as in the regular voucher program? Third, because of the fear generated by prepayment and the funding and rules surrounding sticky vouchers, many residents flee. Although they may take a voucher with them, the result has been to destroy long term communities that developed in these buildings. Often the population of these buildings is vulnerable adults that have learned to support one another. Taking a voucher into the private market is no substitute for this type of support and may result in many of these residents being unable to live independently.

B. *Owners Choosing Not To Renew Their Section 8 Contracts*

Starting in 1975, HUD signed twenty year contracts with private owners to provide project-based Section 8 subsidy to their properties. In 1991 these long term contracts started expiring. From 1999 to 2004, two-thirds of all project-based Section 8 contracts will expire. This means one million subsidized units nationwide are at risk. In 1998, 17,000 subsidized units left the Section 8 program, more than three times the total from the year before.

24. HUD Notice PIH 2000-9(HA) issued March 7, 2000.

Siegesmund: The Looming Subsidized Housing Crisis

While most properties are still choosing to remain in the program, the latest evidence shows that about ten percent "opt-out" and convert to unsubsidized housing.[25] Why are owners opting out of the program in increasing numbers?

1. *Reasons For Opting Out*

Owners often choose not to renew their Section 8 contracts because the "street" rent is higher than the FMR. The FMR, which is the amount the landlord usually receives under the Section 8 contract, often does not reflect what the landlord could receive for this property in the private market. This is especially true in areas that have been gentrified or in cities like the Twin Cities and San Francisco where vacancy rates are very low.

A second reason for opting out is because contracts are being renewed in only one year increments. Some owners are tired of the instability and are choosing to leave the program.

A third reason for opting out involves new government restrictions imposed on projects that were operating inefficiently. Many projects, mostly outside of Minnesota, are run down and have rents above $120 of FMR and even above the street rent. Congress is not willing to subsidize owners to run projects over the cost of private housing. HUD has responded to this problem by limiting Section 8 contract renewal to no more than 120% of FMR. (This does not include buildings which have mortgage financing from MHFA as opposed to an FHA insured mortgage.) "Mark-to-Market" is an attempt to restructure debt so that rental levels and the required subsidies are lower. (This also only applies to FHA insured properties, that is, not MHFA financed or 202 or 515 projects.) Some of these projects, although eligible for Mark-to-Market will opt-out of the contracts rather than restructure their debt and take on new long term use restrictions.

2. *Possible Solution—Mark-Up-To-Market*

Recently HUD has begun to address the problem of contracts rents being below the prevailing market rent. In June of 1999, HUD issued a notice establishing an emergency initiative to preserve below-market Section 8 developments. This has become

25. HUD, *Opting In: Renewing America's Commitment to Affordable Housing, available at* http://www.hud.gov/ressrel/optingin.html. (last visited Nov. 12, 2000).

known as "Mark-Up-to-Market." It was codified in October 1999. The new Mark-Up-to-Market regulations include a provision that Section 8 contracts can be renewed at more than the FMR if a showing is made that rents are actually higher and a higher subsidy is needed to preserve the project. This is helpful, but owners still have the option of leaving the program. Because there is a market study required and other paperwork, Mark-Up-to-Market might not be enough of an incentive to keep owners in who can make more without any administrative burdens by leaving the program.

3. Sticky Vouchers For Opting Out Projects

Congress has provided that tenants will receive vouchers if the contracts are not renewed. In 1999, Congress decided to make these sticky vouchers so that tenants would be able to stay in their buildings. Section 8(t) of the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act, Public Law No. 106-74, enacted October 20, 1999. However this is still a short term solution since it increasingly relies on the willingness of the private market to accept Section 8 vouchers.

C. Assisted Units Are Not Being Fully Replaced

The number of assisted housing units fell in 1996 for the first time in the history of the program. A significant reason for this decline was the repeal in 1995 of the laws that required one for one replacement of housing that was demolished. In addition, from 1995 through 1998, there was a freeze on the funding of new vouchers. The total number of Section 8 subsidies, both project and tenant based have stayed relatively flat since fiscal year 1994.[26]

This decline in assisted housing is occurring at a time when demand is accelerating. The result is reflected in ridiculously long waiting lists. In Minneapolis/St. Paul it is common for someone to wait four years to obtain a Section 8 certificate. Most subsidized projects have waiting lists that can be several years long. Minneapolis Public Housing currently will accept no applications from families and also has lengthy waiting lists. Someone who needs housing within a few weeks has very little chance of securing a subsidized unit.

26. *Id.*

D. The Cost Of Continuing Federal Subsidies Is High And Increasing

The desire to balance the Federal budget is directly contrary to maintaining affordable housing. Expiring contracts, older physical facilities, skyrocketing rents when incomes are staying flat, all conspire to increase costs at a time when Congress does not want to increase spending.

Many project based Section 8 contracts will expire in the next few years and be renewed on a yearly basis. The change from long term contracts to yearly contracts creates the need for larger and larger annual appropriations to simply maintain the status quo. For example, in fiscal year 1997 the cost of renewing project based Section 8 contracts was $3.5 billion. The cost of renewing all contracts in fiscal year 1998 was about $11 billion, over one-third of the HUD budget. The amount to renew contracts is estimated to increase to $16.5 billion for fiscal year 2003. Even if the actual cost of the program were not increasing, this simple accounting change creates the perception of radically increasing costs.

In addition to this accounting change, real costs are increasing. Many physical plants require renovation. Also the federal government must pay a greater and greater amount of the rent. At the same time rents are going up, renters incomes are staying flat or decreasing. Subsidized renters usually contribute only thirty percent of their income. When rents go up, the tenant portion stays the same and the subsidy increases. Thus when incomes stay flat and rents increase, as is the case in a low vacancy market, the government pays more money for the same housing. An increasing number of people in subsidized housing have very low income levels and therefore contribute a very small amount to the rent. Finally, the increasing use of sticky vouchers has authorized rents sometimes hundreds of dollars above the FMR. The result is a tremendous growth in the HUD budget to just stay even.

So far Congress has fully funded all Section 8 renewals–project based and certificates. But the increasing amount required for renewal puts pressure to cut corners. It is likely that strategies will be employed to control costs which have the effect of reducing the number of subsidies or eliminating the most needy. For example, there is increasing pressure to take more moderate income tenants who can pay higher rents. There is no longer any preference in most programs to house the homeless or the most needy. Indeed, Federal Housing legislation passed on Oct 31, 1998, requires that

Public Housing Authorities have a plan for more mixed income developments. FMR levels have been lowered to the fortieth percentile of the local rent distribution. Although this softens the demand on the Federal budget, it has the effect of making certificates unmarketable or requiring voucher holders to pay more than thirty percent of their income for housing. Another cost saving device is the requirement for minimum rents. Everyone, with very limited exceptions, is required to pay at least $25 a month in rent. This may appear to be reasonable. But for a small percentage of persons who are unable to be employed and yet are not sufficiently disabled to be supported by the social service network, even this amount is beyond their reach. Other proposals have suggested setting the subsidy for one person at the FMR for an efficiency rather than a one-bedroom. This would make it even more difficult to find an apartment. All of these proposals have the effect of excluding the most needy so that the government will not have to expend so much to house them. Yet no alternative is offered. The federal government, despite vocal opposition, does not want to take on the full load of housing the most needy.

IV. THE PRIVATE MARKET CANNOT FILL THE NEED

In addition to the declining support of the federal government, factors in the private sector have also accelerated the housing crisis. Skyrocketing rents, low vacancy rates, and reluctance to house low income tenants in private stock, among other factors, have made the private market not a practical alternative to subsidized housing.

A. *Housing Is Increasingly Unaffordable*

Rents in the Twin Cities have sky-rocketed. Finding affordable housing has become a problem for many families. Not only are persons with low incomes affected, including many people with disabilities and seniors, but also the problem now includes working families of modest means.

The dramatic increase in housing needs reflects the escalation in housing prices that has occurred in recent years. For example, between 1995 and 1997, average monthly rents rose at about twice the overall inflation rate, as measured by the Consumer Price Index.[27] Nationally, average rents have risen from $435 in 1984 to $742 in 2000. From 1995 to 1999 rents increased at 1.5 times the rate of inflation.[28]

For many families housing is no longer affordable. A home is usually considered to be affordable if a family pays no more than thirty percent of its income in housing costs. Any more than this, and families often must cut back on other necessities such as food and clothing. By the thirty percent measure, a family in the Twin Cities would have to earn $28,080 per year ($13.50 per hour) to afford to rent a two-bedroom apartment. They would need to earn $21,960 per year ($10.56 per hour) to afford a two bedroom apartment.[29] Many jobs pay far lower salaries. For example someone earning $7.20 an hour or about $15,000 a year would include host/hostess, child care worker, retail sales, and cashier. Someone making $8.65 an hour or about $18,000 a year would include home health aide, teacher's aide, restaurant cook, and janitor or bank teller. Someone making $11.00 an hour or about $23,000 a year (which is still not enough to affordably pay for a two bedroom apartment) would include bus driver, nurse's aide, medical assistant, medical records technician.[30] The ordinary working person cannot support their family in affordable housing.

B. *Low Vacancy Rates Create More Hurdles For Tenants*

The Twin Cities metro area currently has a vacancy rate of less than two percent. A five percent vacancy rate is considered full.[31] The low vacancy rate pushes up demand for housing. This has a number of adverse effects on affordable housing. First, rents have skyrocketed. Second, landlords can be more choosey. This means that they have increasingly decided not to accept Section 8 certificates and vouchers. They also have employed more aggressive screening criteria. Many tenants cannot find housing if they have anything adverse on their credit or tenant histories. Many tenants in the Twin Cities cannot find housing if they have ever had an

27. NEW CENTURY HOUSING, HOUSING AMERICA'S WORKING FAMILIES 11 (June 2000).
28. ST. PAUL PIONEER PRESS, June 13, 2000, at 1B (citing HUD's State of the Cities 2000 report).
29. *Supra* note 12.
30. Family Housing Fund, *Working Doesn't Always Pay for a New Home, available at* http://www.fhfund.org/Research/working.htm (last visited Nov. 12, 2000).
31. *Supra* note 27.

eviction proceeding filed against them, even if they won the proceeding. In addition, more landlords are requiring large security deposits or require that someone have a monthly income more than three times the monthly rent. Most certificate and voucher holders, by definition, cannot afford these financial requirements.

C. *Most Landlord's Will Not Accept Section 8 Certificates And Vouchers*

Certificates and vouchers do not give low-income tenants access to the private market. Homeline does a study of Hennepin County every year to see how many landlords will accept Section 8 certificates and vouchers. Over the past five years, Homeline has found that very few apartments are available to Section 8 certificate or voucher holders and that number has continued to decline. Of course many units do not even qualify because they are above the FMR. By definition the FMR usually excludes sixty percent of all rental housing. The October 1999 Homeline survey of two thirds of the rental units in suburban Hennepin County found that seventy-five percent of the units had rents above the FMR. Of those that do qualify, the vast majority will not take Section 8. The October 1999 study found that Less than ten percent of the surveyed units met the rent requirements of the Section 8 program and accepted Section 8 renters (compared to fifteen percent in 1998, seventeen percent in 1997, twenty percent in 1996 and twenty-seven percent in 1995). To make matters worse, those that say they accept Section 8 often impose other conditions that have the affect of excluding Section 8 certificate and voucher holders. The 1999 study found that of the 4,451 qualifying and accepting units, 2,574, or fifty-eight percent, have some sort of minimum monthly income requirements to be eligible for occupancy. Most of these units (2,358) are in properties whose income requirements effectively exclude almost all Section 8 renters. This leaves only 2,093 units—less than five percent of those surveyed—where Section 8 tenants can use their certificates or vouchers without being excluded by minimum income restrictions and without paying more than thirty percent of their income. The October 1999 Homeline study is available at the Minnesota Housing Partnership website, *mhponline.org*. Less than five percent of suburban rental housing is available to certificate and vouchers holders, and yet they have to compete with non-subsidized tenants for even that limited supply.

There is tangible evidence that certificates and vouchers are not a solution to the loss of subsidized housing units. Certificate and voucher holders have at most 120 days to find housing or they lose the certificate or the voucher. In the Twin Cities as many as fifty percent of families end up losing the certificate because they have been unable to find any available housing within the four month period. Responding to the difficulty of using Section 8 certificates and vouchers, HUD has recently raised the FMR in a few low vacancy metropolitan areas to the fifty percent, including Minneapolis/St. Paul. These will be become effective December 2000.

D. *Demolition Of Housing*

The number of affordable units is also declining because housing is being demolished rather than renovated. Not surprisingly, housing is often affordable when it is older or in poorer condition and cannot command a full market price. Housing such as this is sometimes condemned, closed and eventually demolished. Many cities are more likely to tear down inadequate housing rather than bringing in resources to fix it up and keep it affordable.

In some areas housing is being demolished because of an overconcentration of low income housing, such as in Brooklyn Center, Minnesota and in the near Northside of Minneapolis as part of the Hollman settlement. Although the long term goal is more stable mixed use developments, the short term result is the loss of affordable housing.

E. *Efforts To Deconcentrate Poverty Deplete The Supply Of Affordable Housing*

Housing advocates have argued that concentrations of low income housing are not successful. Many have argued for more mixed-income developments. Instead of new communities building their fair share of low income housing, the immediate result of this policy has been for cities and inner ring suburbs to actually decrease their proportion of low income housing. For example, existing buildings may limit the number of Section 8 tenants in order to have a more diverse income mix. This may be an advantage to the long term health of that particular project, but the short term result is to reduce the amount of available affordable housing.

F. Aging Housing Stock

Much affordable housing, both public and private, is in older buildings that need expensive repairs to be maintained. If repairs are not made, the building is frequently condemned and removed from the supply. If the repairs are made, especially in the private market, the owner often increases the rents and drives out low income tenants.

G. New Housing Is Not Being Built Rapidly Enough

In 1997 nearly as much affordable housing was demolished as was built in the Minneapolis metropolitan area. However, the demand for affordable housing continues to rise. Most new construction is being targeted at luxury renters. Even developers willing to build more affordable housing cannot build housing for the most needy. It is expensive to build any housing. The rents that the most needy could pay cannot cover all the costs of construction. Some subsidy is probably needed to build affordable housing for the most needy.

V. CONCLUSION

Every day I see families and working people who have no where to live and little hope of finding a place to live. In my ten years at Legal Aid I have seen that the private market does not have sufficient incentive to provide decent housing for the most poor. Housing the poorest Americans cannot be profitable. Usually my clients live in substandard housing that would shock the average American. Interestingly the housing crisis has only recently gotten national attention and concern because it has begun to strike at middle America–our grandparents, our children who have recently graduated from technical school or college and cannot find a place to live, our employees, our friends, ourselves. Now that we are seeing the problem, we must take the next step. Nothing will change unless we again make a national commitment to provide a basic level of housing for every American. We all deserve that.